

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

22-CR-109 (LJV-HKS)

v.

PAYTON GENDRON,

Defendant.

**MOTION FOR A SCHEDULING ORDER FOR BRIEFING THE APPEAL OF
DECISION AND ORDER (DOC. 82) AND
MOTION TO STAY THE MAGISTRATE JUDGE'S ORDER THAT DEFENSE
COUNSEL PROVIDE THE GOVERNMENT WITH A DECLARATION**

By Notice of Appeal filed on July 26, 2023, the undersigned gave notice of the appeal from the Decision and Order filed July 13, 2023 (Doc. No. 82) of United States Magistrate Judge H. Kenneth Schroeder, Jr., denying the defense motion to modify the protective order.

- a. Motion for a Scheduling Order for Briefing the Appeal from the Decision and Order (Doc. 82)

Given the unique factual and legal issues raised by the motion to modify the protective order, and in particular the Decision and Order denying same, a request for a scheduling order to provide full briefing of the issues by the parties is requested. The undersigned requests that the Court grant the defense until August 8, 2023, to file its brief in support of the appeal, with the government submission deadline to be set thereafter. We further request a submission date for any reply.

b. Motion to Stay the Magistrate Judge's Order that Defense Counsel Provide the Government with a Declaration

In denying the defense motion for a modification of the Protective Order Governing Discovery, Magistrate Judge Schroeder directed the undersigned to:

provide the United States Attorney's office with a declaration setting forth the identity and contact information of any individual representing the victims and/or family members of victims who was permitted access to any information subject to the protective order, as well as the date(s) and length of time such access was provided and a detailed description of the materials such individual reviewed.

Doc. 82 at p. 19. There is no time requirement in the order by which the declaration is to be provided to the government. The Magistrate Judge provides no basis for requiring this declaration; it was not sought by the government in its opposition to the motion to modify the protective order. Since the declaration necessarily requires disclosure of defense work product information prepared in the course of defense of this case, counsel requests a stay until such time as this Court has had a full opportunity to consider the appeal of the Decision and Order in its entirety.

Dated: July 26, 2023
Buffalo, New York

s/MaryBeth Covert

MaryBeth Covert
Senior Litigator

s/Sonya A. Zoglin

Sonya A. Zoglin
Assistant Federal Public Defender

s/Anne M. Burger

Anne M. Burger
Supervisory Assistant Federal Public Defender